

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S PROPOSED AGENDA FOR  
THE MARCH 10, 2016 STATUS CONFERENCE AND DISCOVERY HEARING**

The Plaintiffs' Steering Committee proposes the following agenda for the March 10, 2016 status conference (before both Judge Zobel and Judge Boal at 2:00 p.m.) and discovery hearing (before Judge Boal following the status conference). The defendants, the Post Confirmation Officer, the FDA, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

**A. MOTIONS FOR WHICH ORAL ARGUMENT IS SCHEDULED DURING THE  
DISCOVERY HEARING<sup>1</sup>**

1. Tennessee Clinic Defendants' Motion for Qualified Protective Order [Filed in Case No. 1:13-cv-12737, Dkt. No. 50]
  - a. PSC's Opposition [MDL Dkt. 2634, and also Filed in Case No. 1:13-cv-12737, Dkt. No. 55]
  - b. Response by Tennessee Attorney General [Dkt. 2654]
  - c. Plaintiffs' Reply to Tennessee Attorney General [Dkt. 2657]
  - d. Tennessee Clinic Defendants' Reply [Dkt. 2692]

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<sup>1</sup> Electronic order setting hearing for March 10, 2016, at 3:00 p.m. [Dkt. 2711].

## **B. REPORT TO THE COURT**

1. Status of bankruptcy
  - a. Post-Confirmation Officer's Notice of Motion for Disposition of Certain Books and Records [Dkt. 2646] (motion granted by Judge Boroff on March 7, 2016)
  - b. Post-Confirmation Officer's Notice Regarding Further Relief from Preservation Order (forthcoming)
2. Status of insurance declaratory judgment actions
  - a. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.)
3. Status of discovery
  - a. Premier Defendants' [Dkt. 2372] Notices of Deposition by Written Questions
    - i. Summit Surgery Center Motion to Quash [Dkt. 2699]
  - b. Box Hill Defendants' [Dkt. 2353] Notices of Deposition by Written Questions
  - c. Premier Assented-To Motion to Extend Common Discovery Deadline to June 1, 2016 [Dkt. 2721]
  - d. Court rulings update:
    - i. Qualified Protective Order Concerning Production of Certain Information Maintained by Third Party Payors [Dkt. 2714]
    - ii. Order Granting Dkt. 2684 Emergency Motion for Extension to Complete Common Expert Depositions until April 9, 2016 [Dkt. 2715]
4. Status of litigation track
  - a. Update on Selection of Bellwether Trial Cases
    - i. Nashville Defendants' Summary of Remaining Bellwether Candidates [Dkt. 2660]
    - ii. PSC Summary of Remaining Bellwether Candidates [Dkt. 2661]
      - a. Saint Thomas Entities Response [Dkt. 2724]
  - b. Update on Common Expert Discovery
  - c. Court Rulings Update
    - i. Electronic Order Granting Ocean State Motion to Dismiss [Dkt. 2649]
    - ii. Order and Opinion on Dkts. 2300 and 2462 Cross-Motions for Summary Judgment [Dkt. 2700]

- d. Status of Entry of Final Judgment as to Settling Parties
- 5. Report from Pro Se Liaison
- 6. Schedule for future status conferences

- i. April 14, 2016, 2:00 p.m. (Zobel); 3:00 p.m. (Boal)
- ii. May 19, 2016, 2:00 p.m. (Zobel); 11:30 a.m. (Boal)

**C. FULLY BRIEFED MOTIONS (ORAL ARGUMENT WAIVED)**

- 1. Saint Thomas Entities Motion for Leave to File Global Motion for Partial Summary Judgment on Putative Claims for Actual Agency and Direct Liability [Dkt. 2594]
  - b. PSC's Opposition [Dkt. 2618]

**D. BRIEFING IN PROGRESS**

**1. Discovery-Related Motions**

- a. PSC's Supplemental Brief and Motion in Limine to Exclude References to Michael O'Neal, O'Neal's Pharmacy Consulting Services, and Saint Thomas Neurosurgical's Medical Executive Committee [Dkt. 2608, 2609]
  - i. STOPNC Defendants' Notice of Stipulation on Extension of Time to Respond until February 18, 2016 [Dkt. 2627]
  - ii. STOPNC Motion for Extension to Respond [Dkt. 2668]
  - iii. STOPNC Defendants' Notice of Suspension of Briefing [Dkt. 2712]
- b. Summit Surgery Center's Motion to Quash [Dkt. 2699]

**2. Dispositive Motions**

- a. Plaintiffs' Motion to Strike Certain Affirmative Defenses, Cross-Claims, and Third Party Claims in Box Hill's Answers [Dkts. 2451, 2452]
  - i. Box Hill's Opposition [Dkt. 2561]
  - ii. Plaintiffs' Reply [Dkt. 2603]
- b. Abdul Barakat, M.D. and Ocean State Pain Management, Inc. Motion to Dismiss Product Liability Claims in *Simas v. Abdul R. Barakat, M.D. et. al* [Dkt. 2390]
  - i. Plaintiff's Opposition [Dkt. 2591, 2592]
  - ii. Abdul Barakat, M.D. and Ocean State Pain Management, Inc. Reply [Dkt. 2723]
  - iii. Plaintiff's Sur-Reply (forthcoming)

Dated: March 8, 2016

Respectfully submitted,

**/s/ Kristen A. Johnson**

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**CERTIFICATE OF SERVICE**

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Proposed Agenda to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: February 8, 2016

**/s/ Kristen A. Johnson**

Kristen A. Johnson, BBO # 667261